COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-295

COMMONWEALTH

vs.

MICHAL LASOTA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a jury trial, the defendant was convicted of two violations of an abuse prevention order.[1] See G. L. c. 209A, § 7. On appeal, he contends that the judge erred in not instructing the jury on accidental contact as the defendant had requested. Although the judge stated during the charge conference that the instruction was applicable to only one of the violations, when he instructed the jury he gave the requested instruction without any limitations. Consequently, the record does not support the defendant's argument, and we affirm the convictions.

[1] The jury acquitted the defendant of strangulation or suffocation of a pregnant victim, in violation of G. L. c. 265, § 15D (c), one count of wanton destruction of property of the victim exceeding $250, in violation of G. L. c. 266, § 127, and intimidation of a witness, in violation of G. L. c. 268, § 13B. The judge entered a finding of not guilty on an additional count of wanton destruction of property.

Background. The jury could have found the following facts. The victim, whom we shall call Sally, and the defendant were in a relationship and had been living together for more than a year when the two had a fight prompted by the defendant's accusation that a friend had seen Sally with another man. Sally was five months pregnant with the defendant's child at the time. The fight became physical. Sally alleged that the defendant put his hands around her neck and broke her eyeglasses. She reported the incident to the police and obtained a protective order under G. L. c. 209A. There is no dispute that the defendant was served with the order, which specified that he could remove his personal items from the house in the company of a police officer at a time agreed to by Sally.

The order was in effect on August 31, 2015, when the defendant went to what was now Sally's home and began to remove various items without a police escort. The defendant had just been released from prison, and it so happened that Officer Steven Kelly of the Quincy Police Department, who had been dispatched to the residence to notify Sally of the defendant's status, arrived while the defendant was there. Officer Kelly observed the defendant walking out the front door carrying some compact discs, a men's shaver, and car keys. The defendant also had a copy of the abuse prevention order in his hand. When Officer Kelly confronted the defendant about his presence at the

house, the defendant stated that his lawyer told him he could go there to retrieve his personal belongings.

About two months later, on October 8, 2015, the defendant placed a telephone call from the Norfolk County house of correction, where he was incarcerated, to a person named Chris, who was friendly with the defendant and Sally. Chris and Sally were together at the time. Upon receiving the telephone call, Chris passed his telephone to Sally, who then spoke with the defendant. A recording of the conversation was admitted in evidence.

Discussion. The first alleged violation of the abuse prevention order was based on the defendant's presence at Sally's residence on August 31, 2015. The second alleged violation was based on the telephone call from the jail on October 8, 2015. Although the defendant's primary defense was that Sally was not credible and the events she described did not happen, he also claimed that both contacts occurred by accident and requested a jury instruction on accidental contact. Initially, the judge agreed to give the instruction with respect to the violation based on the defendant's telephone call only. However, when the judge instructed the jury on accidental contact, he did not state that the instruction pertained to only

one of the two alleged violations.[2] Thus, despite the judge's initial ruling, the instruction, as given, permitted the jury to consider whether the defendant's presence at Sally's home on August 31, 2015, occurred by accident. Accordingly, the record does not support the defendant's argument that the judge erred in failing to give the instruction.

Judgments affirmed.

By the Court (Vuono, Wolohojian & Hand, JJ.[3]),

Joseph F. Stanton

Clerk

Entered: July 22, 2019.

[2] The defendant also objected to portions of the instruction as given at trial, but he has not pursued challenges related to those objections on appeal. In any event, the instruction, which was consistent with Instruction 6.720 of the Criminal Model Jury Instructions for Use in the District Court (rev. May, 2011), was correct.

[3] The panelists are listed in order of seniority.